

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Jose Maltos**

Docket No. **278117**

L.C. No. **80-001144-FY**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction because the defendant cannot appeal the denial or rejection of a successive motion for relief from judgment. See MCR 6.502(G)(1). Defendant's issues do not satisfy the four-prong test for newly discovered evidence. Waiting over 20 years to try to litigate these issues does not satisfy due diligence. Defendant does not provide any factual information as to what effort he made earlier so that the issues could have been raised in the first motion for relief from judgment filed after August 1, 1995, and decided in 1997, or in the subsequent motion decided in 2004. Furthermore, it is very debatable that the issues even involve newly discovered evidence as that term is used. Lastly, even if an attorney may not be eligible to practice law during part of a case, it does not automatically constitute ineffective assistance of counsel. See *People v Mitchell*, 454 Mich 145 (1997). Any other alleged examples of ineffective assistance of counsel could have been raised in the defendant's appeals filed in 1989, 1992, 1998, and 2004.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 21 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk